The Facebook, Inc. v. Connectu, LLC et al Doc. 221 Att. 8

EXHIBIT 7

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Holderfield, Randal

From: Mosko, Scott
Sent: Thursday, October 04, 2007 1:28 PM
To: 'Sutton, Theresa A.'
Subject: RE: Supplemental Interrogatory Responses

Theresa,

Further to my statement that I would be following up with Mr. Taves, based on the testimony provided by Mr. Williams, Mr. Taves has located additional files that may concern ConnectU. We are in the process of investigating these files. Once we are able to open these files, if we find anything in them that is responsive to Plaintiffs' document requests we will produce it, assuming it is not otherwise privileged.

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From: Mosko, Scott
Sent: Friday, September 14, 2007 9:24 AM
To: 'Sutton, Theresa A.'
Subject: RE: Supplemental Interrogatory Responses

Theresa,

I have previously asked the Orrick firm not set arbitrary deadlines, as you have in this email string. Moreover, demands as set forth in this string, with the apparent attempt to conclude that meet and confers have been completed do not qualify as meet and confers under the local rules.

In any event, as I understand your email, you are seeking details that can only be provided by having access to PNS servers. As Mr. Williams has testified, he has not provided services to PNS for some time. He does not have access to any of the PNS equipment. He provided whatever details he could remember in his written responses. Facebook then took his deposition and inquired about the topics. At best, I could provide a declaration from Mr. Williams saying he has no further information to the discovery than what has already been provided.

Regarding PNS, it was my understanding that Mr. Taves performed a detailed search, which included the servers mentioned by Mr. Williams in his deposition. All existing files that concerned Facebook were produced. My understanding, as I stated before, is that Mr. Taves is out of the country. As I previously stated, I will confirm my understanding as soon as Mr. Taves is available.

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From: Sutton, Theresa A. [mailto:tsutton@orrick.com]
Sent: Wednesday, September 12, 2007 1:51 PM
To: Mosko, Scott
Cc: Cooper, Monte; Greer, Yvonne; Dalton, Amy

Subject: RE: Supplemental Interrogatory Responses

Scott-

PNS and Mr. Williams refused to respond to Interrogatories 3-4 as written.

Interrogatory 3 to both Defendants requires each of them to identify from what URL or IP Address they accessed the Facebook website, to state the reasons for their access of the Facebook website, and to identify the dates such access occurred. PNS refused to answer altogether, and Mr. Williams only provided IP addresses for the PNS server.

Interrogatory 4 requires PNS to identify the dates it distributed email communications to Facebook email accounts, and the addresses of all such email accounts associated with California. PNS again refused to answer altogether, and Mr. Williams provided a generic (and inaccurate) explanation of how he claims emails were distributed.

Both Defendants' responses are evasive and incomplete. Supplementation requires: (1) the exact URL and IP addresses from which any employee, agent or consultant of PNS accessed Facebook; (2) a statement of all the reasons for such access of the Facebook website; (3) the identity of the specific dates for such access; (4) the dates emails were distributed to Facebook; and (5) the California email accounts to which such emails were sent.

Please confirm no later than by 12:00 p.m. PDT tomorrow that PNS and Mr. Williams will provide such information, and state the date (no later than October 27) that such supplementation will be provided. We believe the information is available to PNS and Mr. Williams, and that they are required to make all reasonable efforts to provide complete and responsive answers. See Fed.R.Civ.P. 33(a). If they deny the information exists, we will move to compel, including compelling forensic imaging to recover the missing information.

Theresa

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From: Mosko, Scott [mailto:scott.mosko@finnegan.com]
Sent: Wednesday, September 12, 2007 10:34 AM
To: Sutton, Theresa A.
Subject: RE: Supplemental Interrogatory Responses

Theresa,

First, I did not "confirm" anything. Instead, I am trying to understand your objection to the discovery responses. It is unclear to me what kind of supplement you are seeking. You identified certain testimony provided by Mr. Williams. I understood from this citation that you are asking me to check whether the information to which Mr. Williams referred is available. In my previous discussions with PNS, I understood that all information regarding Facebook was produced. Given your citation to testimony, I am attempting to confirm whether additional files are available. I will respond once I have more information.

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From: Sutton, Theresa A. [mailto:tsutton@orrick.com]
Sent: Tuesday, September 11, 2007 5:36 PM
To: Mosko, Scott
Cc: Cooper, Monte; Greer, Yvonne; Dalton, Amy
Subject: RE: Supplemental Interrogatory Responses

Scott-

You do not address Mr. Williams' supplementation, which confirms he does not intend to amend his responses. Further, the issues raised by the deficiencies are not merely related to the IP address but ratherinformation that has been available to PNS at all times. In light of the fact PNS and Mr. Williams previously declined to supplement, we see no reason to wait for Mr. Taves to return. We will move to compel, as previously discussed and referenced in earlier correspondence.

Theresa

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From: Mosko, Scott [mailto:scott.mosko@finnegan.com]
Sent: Tuesday, September 11, 2007 2:21 PM
To: Sutton, Theresa A.
Subject: RE: Supplemental Interrogatory Responses

Theresa,

I am advised that John Taves is out of the country and therefore is not immediately available to confirm whether the IP address mentioned by Winston Williams in his deposition is a source for additional information. As soon as I have some information about this, I will be in touch. Nevertheless, before any motion to compel is filed, I would suggest you review the language you cited to me.

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From: Sutton, Theresa A. [mailto:tsutton@orrick.com]
Sent: Monday, September 10, 2007 1:05 PM
To: Mosko, Scott
Cc: Cooper, Monte; Dalton, Amy; Greer, Yvonne
Subject: RE: Supplemental Interrogatory Responses

Scott-

You can refer to Mr. Williams' deposition transcript at 159:4-160:20 and 201:2-205:20. See also CUCA02972. You also can refer to Monte's June 29 email, and my July 17, email to you, both of which I've attached.

I do not believe that Mr. Williams' departure from PNS absolves either from their discovery obligations.

Please let Monte or me know if PNS and Mr. Williams will supplement their responses.

Theresa

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From: Mosko, Scott [mailto:scott.mosko@finnegan.com]
Sent: Monday, September 10, 2007 11:38 AM
To: Sutton, Theresa A.
Subject: RE: Supplemental Interrogatory Responses

Theresa,

Please send me a more detailed email concerning your request as it concerns interrogatory responses. Specifically, what testimony are you referring to (i.e. page and line number, please)? I will look into the circumstances. As you should know, Mr. Williams has not been part of PNS for quite some time. I am satisfied that PNS did a thorough job in investigating its records for the purposes of responding to discovery. However, if there is some information that you believe sheds light on a location at PNS that might provide additional responsive information, please let me know, and I will investigate.

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From: Sutton, Theresa A. [mailto:tsutton@orrick.com]
Sent: Monday, September 10, 2007 10:50 AM
To: Mosko, Scott
Cc: Cooper, Monte; Greer, Yvonne; Dalton, Amy
Subject: Supplemental Interrogatory Responses

Scott:

Please re-confirm that PNS and Mr. Williams will not supplement any of their Interrogatory Responses (Nos. 1-4). In light of Mr. Williams' testimony at his deposition that it is possible for PNS to recover database information from the servers with IP addresses 207.244.158.164, 207.244.158.165, and/or 207.244.158.34 concerning when information was imported by PNS for ConnectU from the Facebook website, and when invitations were sent to Facebook users. Complete responses to these interrogatories are warranted by both parties.

We held off filing a motion to compel that was the subject of Monte Cooper's prior emails on the subject, as well as my discussion with you on July 16, 2007, pending the Court's resolution of the Defendants' motion to dismiss. In light of the Court's denial of that motion, and PNS' and Williams' answer to the Second Amended Complaint, plaintiffs intend to move to compel unless PNS and Williams agree to supplement with the requisite information.

Please let me know immediately if PNS' and/or Williams' positions have changed.

Thank you

Theresa

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